

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 167 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 - 5 No

AMBARAM NARANDAS

Versus

LAXMANBHAI JIVRAM

Appearance:

MR BHARAT J SHELAT for Petitioner

MR BS TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/12/97

ORAL JUDGEMENT

This Civil Revision Application under Section 29(2) of the Bombay Rent (Hotel and Lodging House Rates Control) Act, 1947 (hereinafter referred to as 'the Act') by the original plaintiff challenging the order dated 1.10.1982 passed by the Assistant Judge, Surat allowing the appeal against the judgement and decree dated 23.10.1981 passed by the Civil Judge (J.D.), Bardoli.

The plaintiff filed suit for recovery of possession on various grounds including default in payment of rent and raising permanent structure without permission. Issues on the said controversy were decided in favour of the plaintiff and thus the trial court decreed the suit.

The appellate court upturned the judgement of the trial court on the ground that there is a non compliance of Section 12(2) of the Act. A valid notice under Section 12(2) is a condition precedent before passing the decree for eviction on the ground of non-payment of rent. Section 12(2) provides that no suit or recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of standard rent or permitted increase dues until expiration of 1.1. next after notice in writing of demand of said rent or permitted increase has been served upon the tenant in the manner provided in Section 106 of Transfer of Property Act, 1892. Mr. U.P. Vyas, learned counsel for the petitioner submits that the learned judge has misread the notice under Section 21. He has read before me the said notice. It is stated in the notice that the defendant-tenant has not paid the rent since 1.10.1978. Thus, he was asked to pay rent on expiry of 15 days. In my view, the notice is not valid notice. It ought to have been the notice of one month. Thus, the view taken by the learned appellate judge does not call for any interference. This Revision Application is accordingly rejected. Rule is discharged.

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